

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
DANIEL DELISE) File No.: EB-FIELDNER-16-000214001
Astoria, New York) NAL/Acct. No.: 201632380003
) FRN: 0025855933

FORFEITURE ORDER

Adopted: December 5, 2016

Released: December 5, 2016

By the Regional Director, Region One, Enforcement Bureau:

I. INTRODUCTION

1. We impose a penalty of \$23,000 against Daniel Delise (Mr. Delise) for operating an unlicensed amateur radio station on the Amateur Radio Service frequency 147.96 MHz from his residence in Astoria, New York, and falsely transmitting an officer-in-distress call. The penalty represents the full amount proposed in the Notice of Apparent Liability for Forfeiture,2 and is based on the full base forfeiture amount as well as an upward adjustment reflecting Mr. Delise’s decision to continue his misconduct after being warned that his actions violated the Communications Act (Act) and the Commission’s rules. After reviewing Mr. Delise’s response to the NAL, we find no reason to cancel, withdraw, or reduce the proposed penalty, and we therefore assess the \$23,000 forfeiture the Bureau previously proposed.

II. BACKGROUND

2. On August 31, 2016, the Enforcement Bureau (Bureau) issued an NAL proposing a \$23,000 forfeiture against Mr. Delise for his apparent willful violation of Section 301 of the Act for operating an unlicensed station on Amateur Radio Service frequency 147.96 MHz and Section 325(a) of the Act for knowingly transmitting a false or fraudulent signal of distress.3 On September 15, 2016, Mr. Delise’s response to the NAL was filed.4 The NAL Response does not deny that Mr. Delise violated the Act, but rather argues that the NAL should be cancelled due to an inability to pay. Mr. Delise also states that he is currently incarcerated and has no income or assets of any kind.

III. DISCUSSION

3. Mr. Delise makes no attempt to refute any of the factual findings or the legal conclusions in the NAL that he operated an unauthorized amateur radio station without a license, or made a false officer-in-distress call. Rather, he emphasizes that he has no assets or income, suggesting that the

1 The investigation began under File No. EB-FIELDNER-14-00017532 and was subsequently assigned File No. EB-FIELDNER-16-00021400. Any future correspondence with the Commission concerning this matter should reflect the new case number.

2 Daniel Delise, Astoria, New York, Notice of Apparent Liability for Forfeiture, 31 FCC Rcd 9656 (EB, Regional Director, Region One, 2016)(NAL).

3 NAL, 31 FCC Rcd at 9658, paras. 7-8.

4 The NAL Response is a handwritten letter that purports to have been filed by Mr. Delise’s father, Salvatore Delise. Letter from Salvatore Delise (dated Sept. 12, 2016) (on file in EB-FIELDNER-16-00021400) (NAL Response).

forfeiture amount should be reduced or cancelled based on his inability to pay.⁵ We decline to reduce or cancel the forfeiture on this basis. The *NAL* stated that the Commission will not consider a request for a reduction or cancellation of a proposed forfeiture unless the person who is subject to the *NAL* has requested such reduction or cancellation and submitted “a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.16 and 1.80(f)(3) of the rules.”⁶ The *NAL* also explained that, to support a claim of inability to pay, Mr. Delise would need to submit (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status.⁷ Mr. Delise did not submit any required documentation or affidavits as required by the Commission’s rules. Accordingly, we find no basis to reduce or cancel the forfeiture based on an alleged inability to pay.

IV. CONCLUSION

4. Based on the record before us and in light of the applicable statutory factors and the Commission’s forfeiture guidelines, we conclude that Daniel Delise willfully violated Section 301 and Section 325 by operating an unlicensed amateur radio station and falsely transmitting an officer in distress call. We decline to cancel or reduce the \$23,000 forfeiture proposed in the *NAL*.

V. ORDERING CLAUSES

5. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act,⁸ and Section 1.80 of the Rules,⁹ Daniel Delise **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of twenty three thousand dollars (\$23,000) for willfully and repeatedly violating Section 301 for operating an unauthorized radio station and Section 325(a) for knowingly transmitting a false or fraudulent signal of distress.

6. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) calendar days after the release of this Forfeiture Order.¹⁰ If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.¹¹

7. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the *NAL*/Account Number and FRN referenced above. Daniel Delise shall

⁵ Mr. Delise also says he has been in and out of drug treatment programs for years. Illegal drug use, however, does not excuse Mr. Delise’s actions, nor is it a basis for a downward adjustment of a forfeiture. See 47 C.F.R. § 1.80; *Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17116, Appendix A, Section II (downward adjustment factors) (1997) (*Forfeiture Policy Statement*), *recon. denied*, 15 FCC Rcd 303 (1999).

⁶ *NAL*, 31 FCC Rcd at 9661, para. 17.

⁷ *NAL*, 31 FCC Rcd at 9661, para. 18. The Commission has discretion regarding the objective evidence of the ability to pay. *Forfeiture Policy Statement*, 12 FCC Rcd at 17107, para. 44 (“[T]he Commission has the flexibility to consider any documentation, not just audited financial statements, that it considers probative, objective evidence of the violator’s ability to pay a forfeiture.”) The *NAL* Response provides only unsupported assertions that Mr. Delise has no assets or income, and without any such support, we cannot consider those assertions to be probative. Moreover, as noted above, the *NAL* Response was signed by Salvatore Delise, purporting to be Mr. Delise’s father. Given Salvatore Delise’s claimed familial relationship with Mr. Delise, we cannot consider the statements in the *NAL* Response to be objective.

⁸ 47 U.S.C. § 503(b).

⁹ 47 C.F.R. § 1.80.

¹⁰ *Id.*

¹¹ 47 U.S.C. § 504(a).

send electronic notification of payment to Janet F. Moran at Janet.Moran@fcc.gov on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.¹² When completing the Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Below are additional instructions that should be followed based on the form of payment selected:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with completed Form 159) must be mailed to the Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

8. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer – Financial Operations, Federal Communications Commission, 445 12th Street, SW, Room 1-A625, Washington, DC 20554.¹³ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by telephone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

9. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by first class mail and certified mail, return receipt requested, to Daniel Delise at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

David C. Dombrowski
Regional Director
Region One
Enforcement Bureau

¹² An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

¹³ See 47 C.F.R. § 1.1914.